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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 130904784-4633-01]

RIN 0648-BD67

Fisheries off West Coast States; List of Authorized Fisheries and Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: Through this action, NOAA proposes to update the Federal list of authorized fisheries and gear issued under section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (“List of Fisheries”). The List of Fisheries includes a description of fisheries that operate in the U.S. West Coast Exclusive Economic Zone (EEZ), the Pacific Fishery Management Council’s (Council’s) geographic area of authority. This action is necessary because the current list is outdated and either includes several fisheries that no longer occur, or does not include fisheries that do occur, within the U.S. West Coast EEZ. The intended effect of this rule is to bring the list up to date with current West Coast fisheries and fishery management plans (FMPs).

DATES: Comments on this proposed rule must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2014-0069, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0069, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; Attn: Yvonne deReynier.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206-526-6129; (fax) 206-526-6736; Yvonne.deReynier@noaa.gov. Joshua Lindsay, 562-980-4034; 562-980-4047; Joshua.Lindsay@noaa.gov.

SUPPLEMENTARY INFORMATION:

Section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that the Secretary of Commerce maintain a list of all fisheries operating in the U.S. EEZ and all fishing gear used in such fisheries (16 U.S.C. 1855(a)). This section of the MSA further prohibits any person or vessel from employing fishing gear or engaging in a fishery

not included on the List of Fisheries “without giving 90 days advance written notice to the appropriate Council.” Fishery management councils are authorized to submit changes to the list to the Secretary of Commerce as each council deems appropriate, after which the Secretary must publish a revised list after providing notice of the changes to the public and after providing an opportunity for public comment on those changes (16 U.S.C. 1855(a)(4)). These requirements became part of the MSA with the enactment of the 1996 Sustainable Fisheries Act and are implemented in Federal regulation at 50 CFR 600.725(v) and § 600.747. The regional lists in 50 CFR 600.725(v) include not just fisheries that are managed under Federal fishery management plans (FMPs), but also state-managed fisheries that may occur within the Federal waters.

From 2010-2013, the Council and its advisory bodies worked on a new Fishery Ecosystem Plan (FEP), which the Council finalized in April 2013. During its FEP discussions, the Council reviewed all of the fisheries occurring within the West Coast EEZ and determined that it needed to closely review and update the List of Fisheries at 50 CFR 600.725(v), Section VI, which lists fisheries that occur within the U.S. West Coast EEZ. The Council has not updated its section of the list since 1999 (64 FR 40781, July 28, 1999). At its September 2013 meeting, the Council finalized recommendations to NMFS for updating its section of the List of Fisheries to ensure that it accurately reflects gear currently used in West Coast fisheries. On October 1, 2013, the Council transmitted its recommended revisions to the List of Fisheries to NMFS. With this notice, NMFS proposes to amend Federal regulations in accordance with the Council’s recommendations, with no additional changes or edits.

The changes to the List of Fisheries proposed via this action primarily reflect the Council’s 1997 conversion and expansion of the Northern Anchovy FMP to a Coastal Pelagic Species FMP and 2003 adoption of a Highly Migratory Species FMP, both of which shifted

several species from state to Federal management. Proposed revisions to the List of Fisheries would provide more accurate detail on the types of gears used in the listed fisheries, and would remove Pacific saury (Cololabis saira) from the list of species expected to be fished in the West Coast EEZ. There have been no commercial landings of Pacific saury since 1980. The proposed revisions to the List of Fisheries are not expected to exclude any currently operating fisheries. NMFS welcomes comments on the accuracy and currency of list revisions proposed by this action.

While reviewing and developing recommendations to revise the List of Fisheries for the U.S. West Coast EEZ, the Council necessarily took a close look at NMFS regulations explaining the entire MSA process at § 305(a). Of particular interest to the Council was the question of restricting new fisheries that could “compromise the effectiveness of conservation and management efforts under [the MSA]” (16 U.S.C. 1855(a)(5)). The Council expressed interest in continuing to allow for innovation in the development of new fisheries within the EEZ, yet also wanted to ensure that new fisheries could not compromise the Council’s ongoing fishery conservation and management efforts. To balance these interests, the Council outlined a process in the FEP Appendix for persons wishing to develop new fisheries to follow so that the Council would receive timely needed scientific information on those potential fisheries. That process, in the FEP’s Appendix at Section A.1.1, recommends that U.S. citizens wishing to initiate new fisheries not on the List of Fisheries should approach the Council with an application for an Exempted Fishing Permit (EFP) and a science plan for that EFP, describing the data to be collected by the EFP fishery and the likely analyses needed to assess the potential effects of converting the fishery to an FMP fishery. This EFP application process is similar to processes the Council uses to allow fisheries participants to explore new gear types and configurations

within existing fisheries. In assessing whether a new fishery could compromise existing Council conservation and management efforts, the Council intends to look at the effects of the fishery on: any Council-managed species; species that are the prey of any Council-managed species, marine mammal species, seabird species, sea turtle species, or other species listed under the Endangered Species Act (ESA); habitat identified as essential fish habitat or otherwise protected under one of the Council's FMPs, critical habitat identified or protected under the ESA, or habitat protected by state or tribal management programs; species subject to state or tribal management within 0-3 nautical miles offshore of Washington, Oregon, or California; or, species that migrate beyond the U.S. EEZ. The FEP Appendix and its EFP process provide an expression of the Council's intent, but do not compel or bind the Council or the public beyond what is already required by the MSA and federal regulations. Therefore, this notice does not seek public comment on the FEP or its Appendix.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the four PFMC FMPs, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The MSA requires the Secretary of Commerce to maintain a list of all fisheries under the authority of each fishery management council and all fishing gear used in such fisheries (16

U.S.C. 1855(a)). The Magnuson-Stevens Act also prohibits the use of any gear or the participation in a fishery not on the List of Fisheries without advance notice to the appropriate fishery management council (see 50 CFR 600.725(v) and 600.747). Section VI of the List of Fisheries at 50 CFR 600.725(v) lists fisheries that occur within the U.S. West Coast EEZ, the Pacific Fishery Management Council's (Council's) geographic area of authority. The Council has not updated its section of the list since 1999 (64 FR 40781, July 28, 1999.)

This proposed rule would implement the Council's recommendations that NMFS update its section of the List of Fisheries to properly represent current fisheries and gear authorized for use within the Council's geographic area of authority. The intent of this action is to update the List of Fisheries, so that the Council could ensure that it would be notified if anyone were interested in pursuing a new fishery for a currently unexploited species. Under this action, the list would more narrowly describe all existing fisheries; fisheries that no longer exist will be removed, but every fisherman fishing today would be covered by the list. In the future, any new fishery may commence after the fisherman gives the Council at least 90 days' advance notice (unless NMFS undertakes a regulatory process to restrict the proposed fishery).

The Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S. including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all

its affiliated operations worldwide. For commercial shellfish harvesters, the other qualifiers apply and the receipts threshold is \$5.5 million. For other commercial marine harvesters, for-hire businesses, and marinas, the other qualifiers apply and the receipts threshold is \$7.5 million. A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment not in excess of 500 employees for all its affiliated operations worldwide. For seafood dealers/wholesalers, the other qualifiers apply and the employment threshold is 100 employees.

No business, small or large, would be affected by this rule. The proposed action is not expected to have any direct or indirect socioeconomic impacts because it would not require fishery participants or fishing communities to alter how they operate in the fisheries, nor would it change who is permitted to participate in West Coast fisheries, nor would it alter available harvest levels for any West Coast species. Because no business would be affected by this rule, the issue of disproportionality, under which we consider whether the regulation would place a substantial number of small entities at a significant competitive disadvantage to larger entities, does not arise. Because the rule would not affect the profits, either positively or negatively, of any entity, the potential for the regulations to reduce the profits of any small entities also does not arise.

A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. No nonprofit organization, small or large, is addressed or affected by this proposed rule. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations less than 50,000. This proposed rule does not address and would also not affect any small

governmental jurisdictions.

This action is expected to have minor, if any, effects on regulated entities. All known fisheries are included on the updated List of Fisheries and NMFS does not know of any new fisheries that are likely to commence in the foreseeable future. Should a fisherman wish to start a new fishery in the future, the minor effects expected from this rule would be that the fisherman would be required by the MSA to notify the Council of his intent to begin fishing. This action does not contain any reporting, record keeping, or any other compliance requirements for either small or large entities. No duplicative, overlapping, or conflicting federal rules have been identified.

Based on the disproportionality and profitability analysis above, this rule, if adopted, will not have a significant economic impact on a substantial number of these small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. NMFS is not aware of any Treaty Indian tribe or subsistence fisheries in the EEZ other than those listed in §600.725(v). This action does not supersede or otherwise affect exemptions that exist for Treaty Indian fisheries.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing vessels, Marine resources.

Dated: August 1, 2014

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 600 is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

2. In § 600.725, in paragraph (v), Section VI of the table is revised to read as follows:

§ 600.725 General prohibitions.

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(v) * * *

Fishery	Authorized gear types
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VI. Pacific Fishery Management Council	
1. Pacific Coast Salmon Fisheries (FMP):	
A. Commercial	A. Hook and line
B. Recreational	B. Hook and line
2. Pacific Coast Groundfish Fisheries (FMP):	
A. Commercial	A. Trawl, hook and line, pot/trap, demersal seine, set net, spear, and hand collection
B. Recreational	B. Hook and line, spear
3. Coastal Pelagic Species Fisheries (FMP)	
A. Commercial	A. Purse seine, lampara net, brail net, dip net, cast net, hook and line
B. Recreational	B. Hook and line, spear, pot/trap, dip net, cast net, hand harvest, rake, harpoon, bow

	and arrow
4. Highly Migratory Species Fisheries (FMP)	
A. Commercial	A. Hook and line, gillnet, harpoon, purse seine
B. Recreational	B. Hook and line, spear, harpoon, bow and arrow
5. Pacific Halibut Fisheries (Non-FMP):	
A. Commercial	A. Hook and line
B. Recreational	B. Hook and line, spear
6. Dungeness Crab Fisheries (Non-FMP)	
A. Commercial	A. Pot/trap
B. Recreational North of 46°15' N. lat.	B. Pot/trap, dip net, hand harvest
C. Recreational South of 46°15' N. lat. and North of 42° N. lat.	C. Pot/trap, hook and line, dip net, hand harvest, rake, crab loop
D. Recreational South of 42° N. lat.	D. Pot/trap, hand harvest, hoop net, crab loop
7. Crab Fisheries for Species other than Dungeness crab (Non-FMP)	
A. Commercial Pot/Trap Fisheries South of 46°15' N. lat.	A. Pot/trap
B. Recreational North of 46°15' N. lat.	B. Pot/trap, dip net, hand harvest
C. Recreational South of 46°15' N. lat. and North of 42° N. lat.	C. Pot/trap, hook and line, dip net, hand harvest, rake, crab loop
D. Recreational South of 42° N. lat.	D. Pot/trap, hand harvest, hoop net, crab loop
8. Shrimp and Prawn Fisheries (Non-FMP):	
A. Commercial spot prawn	A. Pot/trap

B. Commercial pink shrimp North of 46°15' N. lat.	B. Trawl
C. Commercial pink shrimp South of 46°15' N. lat.	C. Pot/trap, trawl
D. Commercial coonstripe shrimp South of 46°15' N. lat.	D. Pot/trap
E. Commercial ridgeback prawn South of 42° N. lat.	E. Trawl
F. Recreational North of 46°15' N. lat.	F. Pot/trap, dip net, hand harvest
G. Recreational South of 46°15' N. lat. and North of 42° N. lat.	G. Pot/trap, hook and line, dip net, hand harvest, rake
H. Recreational South of 42° N. lat.	H. Pot/trap, hand harvest, dip net
9. Hagfish Commercial Fisheries (Non-FMP)	Pot/trap
10. Squid, all spp. except market squid or not otherwise prohibited, and Octopus Fisheries (Non-FMP)	
A. Commercial	A. Hook and line, pot/trap, dip net, seine, trawl, set net, spear, hand harvest
B. Recreational Squid North of 42° N. lat.	B. Hook and line, cast net, dip net, hand harvest
C. Recreational Octopus North of 42° N. lat.	C. Hook and line, pot/trap, dip net, hand harvest
D. Recreational South of 42° N. lat.	D. Hook and line, dip net, hand harvest
11. White Sturgeon Fisheries (Non-FMP)	
A. Commercial South of 46°15' N. lat. and North of 42° N. lat.	A. Trawl, pot/trap, hook and line, seine, dip net, spear
B. Recreational North of 42° N. lat.	B. Hook and line
C. Recreational South of 42° N. lat.	C. Hook and line, spear
12. Sea Cucumber Fishery (Non-FMP)	
A. Commercial hand harvest fishery South of 46°15' N. lat.	A. Hand harvest

B. Commercial trawl South of 42° N. lat.	B. Trawl
13. Minor Finfish Commercial Fisheries South of 46°15' N. lat. and North of 42° N. lat. for: Salmon shark, Pacific pomfret, slender sole, wolf-eel, eel-pout species, Pacific sandfish, skilfish, and walleye pollock Fisheries (Non-FMP)	Trawl, pot/trap, hook and line, seine, dip-net, spear
14. Weathervane Scallop Commercial Fishery South of 46°15' N. lat. and North of 42° N. lat. (Non-FMP)	Trawl
15. California Halibut, White Seabass Commercial Fisheries South of 42° N. lat. (Non-FMP)	
A. California halibut trawl	A. Trawl
B. California halibut and white seabass set net	B. Gillnet, trammel net
C. California halibut hook and line	C. Hook and line
D. White seabass hook and line	D. Hook and line
16. California Barracuda, White Seabass, and Yellowtail Drift-Net Commercial Fishery South of 42° N. lat. (Non-FMP)	Gillnet
17. Pacific Bonito Commercial Net Fishery South of 42° N. lat. (Non-FMP)	Purse seine
18. Lobster Commercial Pot and Trap Fishery South of 42° N. lat. (Non-FMP)	Pot/trap
19. Finfish and Invertebrate Fisheries Not Listed Above and Not Otherwise Prohibited (Non-FMP)	
A. Commercial South of 46°15' N. lat.	A. Hook and line, pot/trap, spear
B. Recreational	B. Hook and line, spear, pot/trap, dip net, cast net, hand harvest, rake, harpoon, bow and arrow
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